

UNITED STATES DISTRICT COURT  
for the  
DISTRICT OF NEW HAMPSHIRE

Dante Baker,  
Plaintiff,

v.

Civil No. 04-CV-355-M

Cesar Rivas et al.,  
Defendants.

**Plaintiff's Pretrial Statement**

Plaintiff Dante Baker, through counsel, respectfully submits the following final pretrial statement.

1. Statement of the Case. Plaintiff agrees with and incorporates the "Brief Statement of the Case" contained in defendants' pretrial statement with one correction. At all times relevant to this lawsuit Dante Baker was a sentenced inmate, not a pretrial detainee, thus the Eighth Amendment and slightly different legal standards apply to his claims of excessive force and the conditions of confinement.

2. Uncontested and Contested Facts. With the correction mentioned above, plaintiff agrees with defendants' statement of "uncontested facts." The remaining facts are likely to be contested.

3. Applicable Law. 42 U.S.C. §1983, the Eighth and Fourteenth Amendments to the US Constitution, and case law setting the rules governing the rights of sentenced inmates to be free from excessive force, free from unreasonable, arbitrary and inhumane punishment, to human conditions of confinement, and to a fair disciplinary process.

Plaintiff intends to rely upon the jury instructions given in the related case of *Surprenant v. Rivas et al.*, and the First Circuit's opinion affirming that judgment as the governing law in this case.

4. Disputed Issues of Law. There does not seem to be a dispute over the legal framework within which plaintiff brings this claim. The dispute is whether plaintiff can prove facts sufficient to establish constitutional violations.

5. Witnesses:

- a. Dante Baker, Hevey Street, Manchester, NH ;
- b. Antonio King, Comfort Court, Marino Valley, CA;
- c. Nicholas Champagne, c/o NH State Prison, North State Street, Concord, NH;
- d. David Coulombe, c/o NH State Prison, E. Milan Road, Berlin, NH;
- e. Jason Surprenant, c/o NH State Prison, North State Street, Concord, NH;
- f. Patricio Paladin, Monroe Street, Nashua, NH;
- g. Richard West, Dubuque Street Manchester, NH;
- h. Joseph Bisson, Manchester, NH;
- i. Angel Correa, c/o NH State Prison, North State Street, Concord, NH;
- j. John Grady, Rimmon Street, Manchester, NH;
- k. Robert Gilbert, Martin Street, Derry, NH;
- l. Joseph Lara, Broadway Street, Pembroke, NH;
- m. Marc Fichera, c/o NH State Prison, North State Street, Concord, NH;
- n. David Macklin, c/o NH State Prison, North State Street, Concord, NH;
- o. Efrain Perez, c/o Hillsborough County Jail, Manchester, NH;

- p. Christopher Robertson, c/o NH State Prison, E. Milan Road, Berlin, NH;
- q. Cesar Rivas, c/o Hillsborough County Jail, Manchester, NH;
- r. James O'Mara, Jr., c/o Hillsborough County Jail, Manchester, NH;
- s. Theresa Pendleton, c/o Hillsborough County Jail, Manchester, NH;
- t. William Raymond, c/o Hillsborough County Jail, Manchester, NH;
- u. Scott Rankin, 188 Main Street, Nashua, NH;
- v. all witnesses listed in defendants' pretrial statement;
- w. Plaintiff reserves the right to amend this witness list with due notice to defendants.

6. Waiver of Defenses. See defendant's pretrial statement.

7. Depositions. Plaintiff reserves the right to read into evidence those deposition transcripts in this matter under appropriate circumstances.

8. Exhibits

- a. Hillsborough County DOC "Inmate Handbook;"
- b. Hillsborough County DOC policies/rules governing staff conduct;
- c. All disciplinary charges against plaintiff during his incarceration at the jail and all documents related to the hearings on those charges and the results of the hearings;
- d. All disciplinary charges and related documents against the other inmates lodged on the evening of July 14, 2002 (King, Champagne, Coulombe, Paladin, Surprenant and West);
- e. Plaintiff's administrative claim with 5/13/2003 cover letter and O'Mara's 7/16/03 response thereto;

- f. All documents generated by defendants' investigation into the events of July 14, 2002;
- g. All documents generated by defendants' investigation into the disciplinary charges against plaintiff and the other inmates "lugged" on July 14, 2002;
- h. All documents generated by defendants' investigation into plaintiff's complaints about the conditions of confinement at RHU;
- i. A floor plan diagram of Units 2B and 2D of the jail;
- j. All request slips and grievances plaintiff filed while at the jail, and the responses thereto;
- k. All request slips and grievances filed by other inmates pertaining to the events of July 14 and to the conditions at RHU, and the responses thereto;
- l. Plaintiff's medical records from the jail;
- m. Policies, procedures or rules governing staff conduct vis a vis disciplinary hearings;
- n. Cell history report, John Grady;
- o. Housing Area Logs for Units 2B and 2D for relevant time periods;
- p. All exhibits listed by defendants;
- q. All exhibits attached to pleadings in this case;
- r. All exhibits marked at depositions in this case;
- s. All exhibits marked at the preliminary injunction hearing and trial in the related case of *Surprenant v. Rivas*;
- t. Plaintiff reserves the right to amend this list with due notice to defendant.

9. Special Damages. Plaintiff claims no special damages.
10. Demand/offer. Plaintiff demands \$50,000; defendants offered \$10,000.
11. Claim of Attorney's Fees. Plaintiff's counsel will make a claim for attorney's fees if successful at trial as permitted by 42 U.S.C. §1988.
12. View. Plaintiff requests a view of the Hillsborough County Jail.
13. Estimated length of trial. 5 days.

Respectfully submitted,  
Dante Baker,  
By his attorney

/s/ Michael J. Sheehan  
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State of New Hampshire  
Merrimack, ss.

I certify that today, April 12, 2006, I forwarded a copy of this pretrial statement to Elizabeth Hurley, Esq, via the ECF system.

/s/ Michael J. Sheehan  
Michael J. Sheehan